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UNCLAS SECTION 01 OF 05 VILNIUS 000165

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E.O. 12958: N/A

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SUBJECT: LITHUANIA: YEAR 2005 SPECIAL 301 REVIEW

REF: A. SECSTATE 23950

[1](#)B. 04 VILNIUS 00226
[1](#)C. 04 VILNIUS 00241
[1](#)D. 04 VILNIUS 00273
[1](#)E. 04 VILNIUS 00372

SUMMARY

[1](#)1. Lithuania is making progress against intellectual property rights (IPR), but it should remain on the Watch List for 2005 due to persistent weaknesses in its enforcement system. A local industry association estimates that the rate of piracy for recorded music, films, and games dropped to 40 percent of the total product in circulation, down from 55-65 percent in 2003. Local IPR advocates indicate that two large organized crime syndicates with Russian links control piracy activities related to these items. The GOL conducted an IPR Public Awareness Campaign, but has still not decided whether to require mandatory source identification coding on optical discs. It seized 316,948 units of audio CDs, DVDs, videos, PC games and other pirated products, (up from 142,800 units in 2003) worth USD 3,548,966, launched cases against six of an estimated 20 distributors of illegal works on the internet, and filed 131 criminal cases and 180 administrative protocols (versus 86 pretrial investigations and 171 administrative protocols in 2003). Court procedures remain slow and cumbersome. Fines levied against IPR violators are low and do not deter pirating. The police are understaffed in the IP section, and border surveillance is inadequate. End Summary.

OVERALL PIRACY RATE

[1](#)2. The Lithuanian Music Industry Association (LMIA), which collects and maintains general piracy statistics, estimates the general level of piracy for music, films, and games in the Lithuanian market at about 40 percent, down from 55-65 percent in 2003. Definitive figures, LMIA cautions, are difficult to derive due to problems with tracking the use of rented films and internet games. LMIA's figures reveal a piracy level of musical works of 30-40 percent, with international repertoire representing 58 percent of the total. This is significantly lower than the International Intellectual Property Alliance's (IIPA) figures of 80 percent for records and music, 65 percent for motion pictures, 58 percent for business software, and 85 percent for entertainment software. The Chairman of the Board of the Phonogram Producers and Distributors Association (FGPA) in Lithuania stated that the piracy rate of phonograms (CDs, musical videos, and DVDs) is greater than 70 percent, resulting in annual losses of USD 20 million.

[1](#)3. FGPA stated that at least two large organized crime groups, likely under Russian mafia control, coordinate and control piracy in Lithuania. The FGPA estimates that each of these Vilnius-based groups has stockpiled 200-300,000 illegal CDs, and sells nearly 300,000 discs per month equally to Lithuanian and foreign customers. Over 50 percent of this volume has pirated American content. The FGPA Chairman explained that organized crime sells its CDs through direct marketing to cafes, bars, offices, and at marketplaces, and by exporting them to Poland, Germany, Latvia and Estonia. More than 90 percent of the illegal product is imported from Russia, Belarus, Ukraine and Poland, while the rest is burned locally.

LAWS PROTECTING IPR

[1](#)4. Lithuania did not modify its IPR-related laws in 2004. A GOL working group has been charged with drafting the relevant legal amendments by August 2005. These amendments will bring the country's copyright and industrial property rights laws into line with EU standards. The amendments

will require the publication of court judgments in newspapers as a preventive measure to discourage IPR violations.

GOL OUTREACH

15. The GOL conducted an IPR Public Awareness Program in 2004. The Ministry of Culture organized public consultations in each of the country's ten largest cities. The Ministry invited representatives of cultural institutions (libraries, museums, theaters, publishers) and small businesses to attend these sessions in order to discuss copyright agreements and the identification of protected works.

OPTICAL MEDIA PIRACY

16. The GOL has not decided whether to require mandatory source identification coding (SID) of all optical discs produced in the country. The Ministry of Culture will make a decision following a meeting with representatives of the recording industry in early 2005. We question the impact of such a rule, however, since most pirated CDs are manufactured outside of Lithuania.

USE OF GOVERNMENT SOFTWARE

17. A Government Information Society Development Committee is considering a draft resolution which will recommend that government institutions use open source computer software programs. The GOL does not have a timeframe for the resolution's adoption, but intends to allocate funds to support training to familiarize agencies with the new software.

INTERNET PIRACY

18. The GOL intends to include in its amendments to the copyright law procedures that would clarify its Ecomas Directive of 2000, which required an internet service provider (ISP) to act expeditiously and block content, upon the request of the appropriate IP right holder. The amendments will define the requirements that the request must fulfill, and a timeframe for the ISP to act. The Managing Director of the Lithuanian Neighboring Rights Association (Agata) informed us that the issue of who should take lead responsibility for internet content is under consideration by Lithuania's Constitutional Court.

TRIPS COMPLIANCE AND OTHER IP-RELATED ISSUES

19. On January 1, 2004, the GOL implemented a six percent tax on blank media carriers to help remunerate the authors of copyrighted works. The Agency of the Lithuanian Copyright Protection Association (LATGAA) collected LTL 2 million (USD 757,576) in blank media carrier taxes in 2004, and distributed this sum to authors.

110. The GOL amended its trademark law on February 19, 2004, and its design law on April 29, 2004, to conform to EU regulations and directives. Community trademarks and designs were given precedence over corresponding national products. The GOL did not modify its patent law in 2004. Parliament, however, will consider amendments during its Spring 2005 session that will harmonize Lithuanian law with an EU directive on biotechnological inventions. All Lithuanian legal limitations to the exclusive rights of copyright owners and producers of sound recordings conform to TRIPS exceptions and EU law.

111. Three Lithuanian laws protect geographical indicators: the Law on Plant Variety Protection, the Law on Competition, which prohibits the declaration of improper origin, and the Law on Trademarks, which bars the registration of a trademark with misleading geographical indicators (GI). Prior to joining the EU, the GOL, on April 26, 2004, modified its Order "On the Protection of Geographical Indicators in Agricultural Products and Foodstuffs" to implement the EU regulation protecting GIs. The Patent Law (effective February 1, 1994) provides patent protection to all technical products, including those derived from genetic resource sharing. There was no change in 2004 to Lithuania's June 16, 1998, Law on the Legal Protection of Topographies of Semiconductor Products, which covers integrated circuits. The Law on folklore supervision protects the rights of folklore artists,

registers their works, and requires publisher-author agreement on remuneration.

LITHUANIA HAS RATIFIED WIPO TREATIES

112. The GOL ratified the two World Intellectual Property Organization (WIPO) treaties in 2002 and incorporated their requirements into national law via amendments to the copyright law of March 5, 2003. Enforcement of the law has been weak. The police initiated only five criminal cases against internet piracy in 2004, up from four in 2003. Embassy feels that this modest progress made little headway in combating the high level of internet piracy in the country.

GOL'S RESPONSE TO IIPA'S LEGAL CRITICISMS

113. The Ministry of Culture responded to criticisms of its Copyright Act that IIPA included in its 2005 Special 301 submission to the Department. IIPA noted that it was unclear whether Lithuania assesses damages for each act of infringement or for each work infringed. The Ministry noted that it is considering the introduction of a sampling procedure under the Civil Procedure to help identify the legality of an entire batch of products. Though the IIPA alleges that the term of protection is too short, the Ministry states that it provides an adequate term of protection for works (for 70 years of an author's life, and an additional 70 years after his death). The Ministry stated it had not heard of the "private copying exception" mentioned by IIPA in its submission. Article 3 of Lithuania's Law on the Protection of Intellectual Property and Neighboring Rights covers the first release or simultaneous publication -- in Lithuania -- of works or phonograms. Lithuanian law confirms the rights of broadcasters to receive royalties, in compliance with the International Rome Convention (Article 12) and the WIPO treaty (Article 15). Agata collects these broadcasting royalties.

ENFORCEMENT

Police

114. The Criminal Police, together with LMIA, conducted inspections of 239 companies and retailers in 2004. It seized 316,948 units of pirated products, mostly audio CDs. 65 percent of black market sales in Lithuania were for musical products, 31 percent were for audiovisual works, and four percent for games. The corresponding proportion of these products in the legal market is music - 52.25 percent, audiovisual works - 26.75 percent, and games - 21 percent. In 2003, the police confiscated 142,800 units of CDs, videos and computer software, and brought three actions against organized crime groups in 2004. In February, it seized 36,000 units, including 11,000 audiocassettes and 20,000 audio CDs, of pirated product from an illegal warehouse in Vilnius. It seized another 170,000 units from a second Vilnius warehouse and from a production facility in July, and more than 30,000 CDRs (including 10,000 blank CDRs) and 2,800 DVDs smuggled from Russia in Kaunas in December.

115. The total value of products seized by the police in 2004, utilizing the lowest legal retail prices, was LTL 9,369,270 (USD 3,548,966), of which music works constituted LTL 6,149,970 (USD 2,329,534) of the total, audiovisual works LTL 2,940,960 (USD 1,114,000), and games programs LTL 278,340 (USD 105,432). LMIA's data suggests that losses to the owners of international repertoire music works rights in 2004 were about USD 6.13 million.

116. An LMIA representative reported that, following the establishment of a five-person specialized IPR police unit, crime bosses masterminding piracy activities and retail outlets selling pirated goods have increasingly been targeted by law enforcement. The specialized unit utilizes city police officers to conduct the raids and undercover stings. Every major police department in Lithuania dedicates one officer to coordinating IPR activities.

INTERNET PIRACY

117. The police launched six cases (one administrative, five criminal) against internet distributors. In one raid, police seized 2,900 films from a distributor. In 2003, police initiated four criminal prosecutions against websites marketing pirated products. LMIA estimates that

there may be as many as 20 distributors selling pirated products over the internet. Agata and FGPA are trying to establish cooperative agreements between ISPs and rights holders under which the ISPs will agree to block the broadcasting of protected works. The Agata Managing Director noted the difficulty in getting permits from international phonogram producers, since many don't have local offices in Lithuania. Protecting IPR rights on the internet, she said, is an area of particular interest for her organization, since there is a growing potential for abuse of IPR on the internet.

INADEQUATE INTER-AGENCY COORDINATION

118. The coordination between GOL agencies charged with IPR protections could improve.

Customs

119. Customs intercepted few pirated products in 2004. Most pirated products are smuggled into Lithuania without an opportunity for Customs inspection. Further, now that Lithuania is part of the EU, Customs does no inspection of vehicles entering through Poland and Latvia. They only inspect at the borders with Belarus and Kaliningrad, reducing the amount of contraband they might find. The FGPA Chairman criticized the Customs Intelligence Service for not being more active in identifying corrupt Customs officers and cars carrying smuggled goods. He noted that one car is capable of concealing 6-10,000 CDs.

The Courts

120. The police filed 131 criminal cases and 180 administrative protocols for IPR violations in 2004. (An administrative protocol is a description of a violation of the Administrative Code, which is judged by an Administrative Court.) In 2003, the police began 86 pretrial investigations, and filed 171 administrative protocols.

121. The maximum penalty for piracy is LTL 2,000 (USD 758), but courts usually award penalties of between LTL 100-200 (USD 38-76). Pirates often receive lower penalties by claiming mitigating circumstances as a basis for leniency. Industry representatives told us that these fines fail to adequately deter piracy. Pirates, they tell us, fear retaliation from organized crime more than penalties imposed by the judicial system. The Ministry of Culture told us that a draft law under consideration by parliament would increase the maximum fine for individuals under the new Administrative Code to LTL 5,000 (USD 1,894), and for legal persons to LTL 10,000 (USD 3,788).

122. The relevant laws are new, and experts cite the need for judges to receive training in interpreting these laws. During a December 2004 USG-funded visit by U.S. Patent and Trademark Office Senior Counselor Michael Keplinger, Court of Appeals Judge Virginija Cekanauskaite remarked that her colleagues could use training in how U.S. and other foreign judges interpret IPR statutes.

123. IIPA and FGPA raise valid concerns about the cumbersome nature of the court-mandated expert review process. The courts require that experts submit reports after identifying, examining, and translating the title of each seized album. Courts require these reports to confirm that the stolen intellectual property belongs to the rights holder, a process that necessitates the comparison of each CD code with corresponding legal CD codes. By contrast, common European practice sanctions the use of sampling.

BALTIC OPTICAL DISC PLANT

124. In its submission, IIPA noted the recording industry's complaint alleging pirate production at the Baltic Optical Disc (BOD) plant. The LMIA and FGPA told us that the plant is "clean." LMIA opined that production of pirated goods at BOD is unlikely, because the plant is inspected by the police, LATGAA, LMIA and NCB (the Nordic Copyright Bureau). LMIA added that these inspections had found no evidence of piracy.

RECOMMENDATION -- KEEP LITHUANIA ON THE WATCH LIST

125. Lithuania continues to have IPR problems, despite its progress. We concur with the thrust of IIPA's criticisms, and with its recommendation that Lithuania remain on the Watch List for 2005. The piracy rate dropped to about 40 percent from 55-65 percent in 2003, the government

conducted a Public Awareness Campaign on IPR protections, and is making a good faith effort to tackle internet piracy, launching cases against six of an estimated 20 distributors of illegal media. The Criminal Police seized 316,948 units of pirated products, up from 142,800 units in 2003. The police brought three actions against organized crime groups in 2004. Enforcement, however, remains the weakest element in the country's IPR protection system. There appears to be insufficient political will to tackle the problem. Additional high-level attention focused on the importance of IPR protections would be beneficial on the ground. The law enforcement effort against piracy is constrained by inadequate resources, corruption, low fines, and a slow and cumbersome process of redress in court.

EMBASSY'S EFFORTS TO PROMOTE IPR PROTECTIONS

26. We will continue to urge Lithuania to make greater efforts to address weaknesses in its enforcement system. USG-funded programs made it possible for U.S. experts to hold a two-week training session for Lithuanian Customs and Police officers in January 2005, for two Lithuanian Court of Appeals judges to participate in an IPR business-judicial roundtable in Bratislava, and for a U.S. copyright expert to speak at a GOL conference to commemorate the 10th anniversary of Lithuania's membership in the Berne Convention. We also solicited and arranged the first ever visit to Lithuania of a representative of the Motion Picture Association of America to discuss piracy issues with key distributors and government officials. We will encourage the GOL to approach IPR violations within the broader context of complex crimes encompassing tax evasion and illegal employment, and to continue to go after the organized crime bosses masterminding piracy in Lithuania.

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